Draft 15.2

October XX, 2021

To: Oregon Cannabis Commission (OCC)

From: Joint Patient Equity and Governance Frame Working OCC Subcommittees

Re: OCC Recommendations to the Oregon Liquor and Cannabis Commission (OLCC) regarding Oregon Medical Marijuana Program (OMMP) patient access flexibility and reducing costs in testing, processing, and retail access

Introduction

475B.961 Duties of commission. In addition to any other duty prescribed by law, the Oregon Cannabis Commission shall:

- Provide advice to the Oregon Health Authority with respect to the administration of ORS 475B.785 to 475B.949
- Provide advice to the Oregon Liquor Control Commission with respect to the administration of ORS 475B.010 to 475B.545, insofar as those statutes pertain to registry identification cardholders and designated primary caregivers, as those terms are defined in ORS 475B.791
- **Develop a long-term strategic plan for ensuring that cannabis will remain a therapeutic option for persons with debilitating medical conditions as defined in ORS 475B.791**
- **Develop a long-term strategic plan for ensuring that cannabis will remain affordable for persons with debilitating medical conditions as defined in ORS 475B.791; and**
- Monitor and study federal laws, regulations and policies regarding marijuana. (emphasis added)

Executive Summary

1.The Subcommittees on Patient Equity and Governance Framework began meeting as a joint committee in March of this year. One goal of the subcommittee has been to encourage the OLCC, and licensees meet for the purpose of developing minimum requirements for patient access flexibility that each licensee must meet as part of the application process.

2.In response to concerns raised ~~Following on comments made~~ by commissioners in the July 2021 OCC meeting, the subcommittee ~~revised the recommendations~~ has worked to prioritize and clarify the recommendations in this request. We have reduced the number of recommendations ~~to five and~~ and provided further detail ~~more background~~ on the issue, why they should be corrected and ~~how. The recommendations reflect the subcommittee's top concerns related to current OLCC service delivery model for OMMP patient and caregivers, and~~ how the OLCC, in collaboration with other agencies, may resolve them.

3.The consensus of the Subcommittee members is that to sustain the needs of OMMP cardholders using cannabis daily to mitigate a debilitating condition, the retail market is unsustainable, the pathways to processing and producers are not working as an in anticipated and to alleviate these circumstances the following issues should be addressed.

- Ensure products meet medical grade standards in production, processing, and packaging and are in easily identifiable patient sections that include the full range of affordable cannabinoid products in patient packaging with tax exempt pricing clearly visible.
- Greater oversight and ongoing training and review for retail personnel especially as it relates to providing medical advice to customers.
- Increasing access to testing and processing by subsidizing costs of these services for patients and caregivers producing personal use cannabinoid products.
- Creation of a pilot program composed of participating licensees to develop these recommendations and the funding mechanism necessary to ensure cannabinoid products and access to processing and testing of cannabinoid products produced for personal use are available at no-cost to qualified patient through all licensees and that participating licensees are compensated for these services.

4.The subcommittee recognizes ~~some of the~~ these, ~~-~~recommendations will require changes to ~~the~~ statute, ~~and~~ others can be accomplished in rule, ~~,~~ and creation of a pilot program is provided for under ORS 475B.025(2)(g). These recommendations are reasonable, ~~can be adopted easily~~, and will help ensure the Commission meets its legislative directives cited above.

5.~~There have long been pathways to n~~ No-cost cannabis options for OMMP patients ~~by~~ from licenses in production, processing, and retail ~~access~~ have been in place for some years for licensees but ~~little inclination to~~ participation~~e~~ in any of these approaches to provide for patients has been negligible~~.~~ Proactive and any cooperative effort among licensees to provide any level of long-term, dependable access for cardholders has been intermittent, limited in scope and in the end, unsustainable.

6.There are five issues and recommendations contained in this report. The excessive cost of testing and limited access to processing, quality, and long-term availability of the full range of cannabinoid products, , remain a primary focus for the subcommittee. Upgrading retail personnel training, redirecting grower pathway to no-cost cannabis for qualifying patients, and a recommendation to create a pilot program to develop funding options for subsidizing costs for qualified patients and compensation for participating licensees are all essential in meeting our legislative directives for the long-term. ~~funding for reducing patient and caregiver costs.~~

~~**Recommendation 1:**~~
~~Increase access to OLCC processors. Amend ORS 475B.139(3)(b) to allow OMMP growers currently tracking in CTS to transfer plant material to OLCC licensed processors. Increase the number of transfers allowed per year.~~

~~Change OAR 845-025-3305(d) to increase amount of plant material and finished product that may be transferred per year by increasing the number of transfers that can be made to a patient or caregiver in a 12-month period.~~

Commented [AT1]: These have all been enumerated above

~~Changes should be made that would allow for patients to receive an amount necessary for a 30 to 90-day supply~~

~~**Recommendation 2:**~~
~~The subcommittee recognizes the issue of "medical grade' quality will require work from a wide range of experts but recommends the OLCC begin by working in collaboration with the OCC, OHA and the cannabis research community to develop minimum guidelines for product quality and availability.~~

~~Expand packaging serving sizes.~~

~~**Recommendation 3:**~~
~~Amend OAR 845-025-5500, marijuana worker permit, to include more oversight and ongoing training for retail personnel (including OLCC managers and owners, patients, and others involved in the cannabis community) in coordination with the OCC.~~

~~ORS 475B.266 requires the OLCC to provide training on the items listed below to obtain a Marijuana Workers Permit (MWP), but the online course and open book test makes obtaining a MWP easy.~~

~~Expand OAR 845-025-5560, marijuana worker examination requirements.~~

~~**Recommendation 4:**~~
~~Amend ORS 475B. to allow producers to transfer to retail licensees with remove requirement that product transferred from a segregated or increased canopy entirely and allow producers to transfer from inventory.~~

~~**Recommendation 5:**~~
~~Under ORS 475B.025(2)(g), establish a pilot program to bring together interested licensees willing to participate in the consideration and development of testing and processing services provided at cost or less for qualified patients. Suggestions for consideration should include complete subsidization of costs for qualified patient, a sliding scale for others, specific days once a month where services are offered at cost or no cost. Labs and processors are at liberty to initiate any of these options but establishing a pilot program offers them the opportunity to shape the patient access program from the ground up.~~

~~Executive Summary~~

Commented [AT2]: Moved executive summary to front of report and enumerated recommendations in bullets.

~~The overriding purpose of these recommendations, however, is to push the OLCC into sitting down with their licensees with this guidance and develop ways and programs to reduce the costs of testing, processing and the availability of the full range of cannabis products.~~

~~Subsidizing these recommendations for those patients who may qualify based on card fees and other criteria will increase the quality and availability of cannabinoid products for the most~~

~~vulnerable of the cannabis medical population, ease access to processing by reducing the associated costs and add an additional measure of public safety for cardholders producing their own cannabinoid products.~~

~~The ultimate goal is to develop a minimum set of requirements for patient access flexibility that each licensee must meet as part of the application process.~~ ~~Retail access, processing, and production fall short in providing patients with access to the full range of services and~~ ~~The ultimate goal is to develop a minimum set of requirements for patient access flexibility that each licensee must meet as part of the application process.~~ ~~cannabinoid products at affordable costs and on a consistent and dependable basis.~~

Commented [AT3]: Moved to Para. 1

~~The subcommittee recognizes some of the recommendations require changes to the statute, and others can be accomplished in rule. These recommendations are reasonable, can be adopted easily, and will help ensure the Commission meets its legislative directives.~~

Commented [AT4]: Moved to Para. 4

~~There have long been pathways to no-cost cannabis for OMMP patients by licenses in production, processing, and retail access but little inclination to participate in any of these approaches to provide for patients. Proactive and any cooperative effort among licensees to provide any level of long-term, dependable access for cardholders has been intermittent, limited in scope and in the end, unsustainable.~~

Commented [AT5]: Moved to Para. 5

~~There are five issues contained in this report. The excessive cost of testing and limited access to processing, quality, and long-term availability of the full range of cannabinoid products, retail personnel training, grower pathway to no-cost cannabis, and funding for reducing patient and caregiver costs.~~

Commented [AT6]: Moved to Para. 6

Issues and recommendations

Issue 1
The prohibitive costs of testing and processing has limited access to processing of concentrates, extracts and oils by OLCC licensed processors for personal use by OMMP patients and caregivers. (See addendum 2 for further discussion)

Testing cannabis is expensive. A full compliance panel which includes pesticides, solvents, water content, microbials and cannabinoid profile is on average, $350. Individual testing to determine cannabinoid profile and potency of flower, for instance, ranges from $60 - $75 and increases depending on the product, edible, tincture, oil submitted for testing.

Going rates for processing are $50/lb. for oil, $100/lb. for extracts. testing is required on all finished product before transferring back to a patient or caregiver and small transfer amounts between processor and patient also make it difficult to seek processing from an OLCC licensee. In some instances, not all finished products may be transferred back to the patient.

These costs affect access to processing for qualified patients and caregivers seeking these services. Providing these services at reduced or no-cost rates will increase public safety around the personal use of cannabinoid products patients and caregivers already producing these products for themselves. Access to testing will increase patient independence and reduce adverse effects that may be the result of using a product of undetermined potency.

Recommendation 1
Increase access to OLCC processors. Amend ORS 475B.139(3)(b) to allow OMMP growers currently tracking in CTS to transfer plant material to OLCC licensed processors. Increase the number of transfers allowed per year.

Change OAR 845-025-3305(d) to increase amount of plant material and finished product that may be transferred per year by increasing the number of transfers that can be made to a patient or caregiver in a 12-month period.

Changes should be made that would allow for patients to receive an amount necessary for a 30 to 90-day supply

Issue 2
Lack of dependable availability and consistency of quality in products within the retail market especially non-flower products.

A central plank of our legislative directive is to develop long-term strategic plans that ensures cannabis remains both available long-term for those that benefit from its use and that it remains affordable.

Today's cannabis products, flower, concentrates, extracts, and oils are here to stay. Tax free purchases for patients along with other discounts for veterans, seniors and store specials have lowered prices even for concentrates and extracts. What was once $60/gram for oil and $35/gram extracts, are now $10 - $20/gram for both. Flower prices are equally low, and retailers typically offer at least one or two flower selections at reduced prices even as low as $60/oz. Low prices do not always mean the quality will be acceptable.

Dependable availability and quality, however, remain a constant issue. Ongoing dependability for the long-term falls short for patients and while all products are tested, other factors may determine whether a low-priced product will meet a patient's needs, what was available one week may not be available the next or at all. Patients who depend on a particular strain or profile cannot switch out another product as easily as a consumer is able to do. A change may not be as beneficial, be more expensive, or be a one-off product.

~~In an effort t~~To help guide ~~facilitate~~ this work please see the attached addendum. It provides ~~which provides~~ recommendations on good practices in manufacturing that ~~which~~ will increases consumer and regulatory confidence in the accuracy and reliability of identity, strength, and purity of cannabinoid products. The guidelines ~~F~~focus~~ing~~ on an OMMP patient-based approach especially for the disabled or health-compromised consumers, and ~~the addendum~~ provides

guidance on how to address potency, i.e., how to define low, high, and medical strength.~~,~~ ~~and~~ The addendum also provides further guidance on labeling and availability of Certificates of Analysis and discusses~~.~~ the need ~~for~~ a wide range and strength of products including a definition of those different strengths and offers a distinction between medical grade and medical quantity.

(Please see the attached Addendum1 for an example of these guidelines and requirements.)

Recommendation 2
The subcommittee recognizes the issue of "medical grade' quality will require work from a wide range of experts but recommends the OLCC begin by working in collaboration with the OCC, OHA and the cannabis research community to develop minimum guidelines for product quality and availability.

Expand packaging serving sizes. All non-flower possession limits for cannabinoid items are the same for patients and non-patients alike. Revisit packaging and dose amounts for patients, adjust possession limits of non-flower cannabinoid items to reflect greater usage by cardholders increase.

~~(Please see the attached Addendum1 for an example of these guidelines and requirements.)~~

Issue 3
~~There is legitimate concern regarding r~~Retail counter personnel who may be providing ~~medical~~ advice to customers are a legitimate concern and create liability issues for retail licensees. Retail personnel should have greater training in what information can and cannot be provided about the benefits of a particular flower or cannabinoid item and what conditions it can treat. A~~a~~ general familiarity with statute such as possession limits, patient purchase tax exemptions, and general competency in cannabis must be the benchmarks for retail personnel. The ability to accurately check identification, if a customer is intoxicated or how rule requires the handling of cannabis products in general provide a good starting point, but better training and oversight is required.

Recommendation 3
Amend OAR 845-025-5500, marijuana worker permit, to include more oversight and ongoing training for retail personnel (including OLCC managers and owners, patients, and others involved in the cannabis community) in coordination with the OCC which includes:

- Annual review of ongoing training by the OLCC, OHA and OCC Research subcommittee
- Regular determination of metrics of training program every 1 – 2 years of the training program itself, obtain training program outcomes, experiences.
- Regular evaluation to ensure counter personnel are up to date on current rules, for example see the City of Portland CPOT team.
- A clear directive that counter personnel cannot provide medical advice

ORS 475B.266 requires the OLCC to provide training on the items listed below to obtain a Marijuana Workers Permit (MWP), but the online course and open book test makes obtaining a MWP easy. MWP holders are required to understand:

- Checking identification
- Detecting intoxication
- Handling marijuana items
- If applicable, producing and propagating marijuana
- If applicable, processing marijuana
- The content of ORS 475B.010 to 475B.545 and rules adopted under ORS 475B.010 to 475B.545, or
- Any matter deemed necessary by the commission to protect the public health.

Expand OAR 845-025-5560, marijuana worker examination requirements to include:

- The content of ORS 475B.797 to ORS 475B. 895
- How to become an OMMP patient
- The risk and benefits of vaping and what to look for
- Promoting patient self-care and independence; and
- How to use/self-administer cannabis.

Issue 4
Growers are limited in how to provide cannabis to patients. They may increase the amount of canopy by up to 10% or segregate a portion of existing canopy. Options requires 75% of any harvest from a canopy designated for medical production must be transferred to patients at no cost.

Currently there are no OLCC producers doing this. However, most producers have plant material that could be donated to patients, but producers do not favor having to facilitate transfers to individual patients and caregivers but would transfer to a retailer to transfer this product to patients. Consideration must be given to the quality of product transferred and testing should eliminate most of these concerns. Harvests dates will also be key in these transfers.

Recommendation 4
Amend ORS 475B. to allow producers to transfer to retail licensees with remove requirement that product transferred from a segregated or increased canopy entirely and allow producers to transfer from inventory.

Issue 5
Funding for subsidizing costs for testing and processing for cardholders seeking these services for personal use cannabinoid products.

The primary source for funding any program that reduces costs to patients for services has always fallen back on the hope that the state will decide that the proper course for funding the medical program, cannabis research funding, and innovations in cannabis innovations is to amend the

allocation of- retail cannabis tax revenue. Current political climate puts this option out of reach for now but this option must continue to be pursued.~~the time being~~.

When discussing providing for patients, the biggest concern licensee's ~~number one question is~~ always express is how are they ~~are~~to be- compensated for giving away cannabis, processing for free or subsidizing testing. At the same time licensees have some promising ideas on how providing these services at reduced prices could be accomplished. This is the purpose of this recommendation. The Commission has offered suggestions of how to approach making services available for less cost to patients and caregivers but at some point resolving the issue of reducing the cost to patients and caregivers for products and services must be done by the OLCC and its licensees.

Recommendation 5
Under ORS 475B.025(2)(g), establish a pilot program to bring together interested licensees willing to participate in the consideration and development of testing and processing services provided at cost or less for *qualified patients.** Suggestions for consideration should include complete subsidization of costs for qualified patient, a sliding scale for others, specific days once a month where services are offered at cost or no-cost. Labs and processors are at liberty to initiate any of these options but establishing a pilot program offers them the opportunity to shape the patient access program from the ground up.

Addendums

Addendum1 quality of products

Addendum 2 in support of Issue 1

- **Qualified Patient* means any registry identification cardholder who qualifies for a reduced fee registry identification card or their designated caregiver, or any registry identification cardholder who would qualify under **ORS 475B.873(2), qualifying cardholders for receipt of reduced or no-cost cannabis in non-profit dispensaries**
    - **475B.873 Receipt of marijuana by nonprofit dispensary; dispensation to certain cardholders; rules ORS 475B.873(2)** registry identification cardholder's annual income is at or below the federal poverty guidelines.

Testing by patients and caregivers producing their own flower and personal use cannabinoid products fall into two categories: Compliance testing and personal use testing.

Compliance testing is required for finished products after a product has been processed and before it can be transferred back to a patient or caregiver. Personal use testing is typically to determine the cannabinoid profile for the presence and potency of certain cannabinoids in flower and personal use products.

OAR 333-007-0330 requires a processor or processing site to "*test every process lot of a finished cannabinoid concentrate or extract for use by a consumer or patient prior to selling or transferring the concentrate or extract."* These products must be tested for the following things:

- Pesticides
- Solvents
- THC and CBD

The pesticide tests are often the most difficult to meet. If a finished product exceeds Limits of Quantification (LOQ's), for pesticides set by the state, the product cannot be transferred. The patient/CG is then faced with either destroying the finished product or trying to remediate the product to within the LOQ's. A second test will be required after remediation and if the product still fails the pesticide test it must be destroyed. All these costs are paid by the patient or caregiver.

The cost for a complete compliance panel averages around $350 per test. putting the cost of processing out of the question for the patient that wants to have plant material turned into concentrates and/or extracts. A simple THC/CBD test on edibles typically begins at $100 and increases with the complexity of the test.

Testing by patients who grow and produce cannabinoid products for personal use Patients often wish to know the cannabinoid profile of the flower or cannabinoid product they have produced, edibles, tinctures, topicals. This group also includes caregivers with more than one patient testing who depend on consistent product that is best determined by testing.

Access to processing.

ORS 475B.139 allows for OLCC licensed processors, for a fee, to receive cannabis plant material from a registry identification cardholder or caregiver to be processed into finished product. OAR 845.025.3305 limits the amount of plant material a patient or caregiver may transfer to an OLCC processor and z finished product the processor may transfer back to the patient or caregiver. The per year transfer limits outlined below are insufficient to meet the needs of a patient who is using these products daily or caregivers with multiple patients.

Under OHA, OMMP growers could take cannabis plant material to an OHA processor and have it processed into extracts and full extract oils also known as FECO (full extract cannabis oil) and RSO ((Rick Simpson Oil). The processor would return the finished product to the grower for transfer to patients.

OLCC processors are prohibited from accepting plant material for an OMMP grower. This places the burden for supplying plant material to the processor on the patient or caregiver. Finished product must be transferred back to the patient or caregiver. However, transfer amounts are

extremely limited and only limited amounts may be transferred back to the patient and could result in less than the total finished product being transferred back to the patient or caregiver. (Transfer amounts are based on possession limits of these products and match possession limits for non-patients. An increase in the number of transfers per year could resolve this with negligible effect on public safety would be especially helpful for the caregivers with multiple patients.

- Patient transfers to OLCC processors may not exceed 3 pounds per year and may only be transferred to the processor in batches of 24 ounces or less.
- Transfers of finished products from an OLCC processor to a patient or caregiver are limited to no more than 2 ounces per year for extracts and may only be transferred in quantities of 1 ounce or less that have been tested, package and labeled in accordance with statute.

Theses transfer limits prevent patients and caregivers from access to OLCC processing. In the absence of OHA processors and the daily cost of these products in the retail marketplace, patients and caregivers source these products in other ways. Currently the number of patients and caregivers seeking finished product testing for personal use from OLCC processors is negligible, and the number of patients receiving these products is significantly less than when OHA processors were still actively serving the patient community.

Access to processing is further compounded by the limited number of processors who provide small batch processing, choosing the type of processing available and if a processor requires a full compliance panel test prior to processing for new clients.